



CITY OF HOUSTON

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September 4, 2019

Attorney General Ken Paxton
Texas Attorney General
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Open Records Division

Re: Public Information Act request received on August 12, 2019, and clarified on August 13 and 14, 2019, from Chris Adkins, for any and all policies, directives, or other guiding material regarding the enforcement of the following categories related to homeless citizens in the City of Houston: police interaction, transportation, housing, arrests, and legal representation. **GC No. 26088.**

Dear General Paxton:

This is a follow-up to my letter dated August 22, 2019 (**Exhibit 1-A**). The City of Houston (the "City") received the above-referenced original request for information on August 12, 2019 and the clarified requests on August 13 and 14, 2019 (**Exhibit 1**). The City notes that Monday, September 2, 2019, was observed as a City holiday. **By copy of this letter**, the City is informing the requestor the City believes the responsive information (**Exhibit 2**) is excepted from public disclosure under sections 552.103 and 552.107 of the Government Code. The City notes the responsive information is voluminous; thus, the City has enclosed a representative sample for your consideration. **See Exhibit 2.** The Legal Department has no other responsive information pertaining to this request and has referred the requestor to the Houston Police Department for a portion of the responsive information.

Section 552.103 of the Government Code

Section 552.103 of the Government Code provides, in pertinent part, that:

(a) Information is excepted from the requirements of Section 552.021 if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or political subdivision, as a consequence of the person's office or employment, is or may be a party.

* * *

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under subsection (a) only if the

litigation is pending or reasonably anticipated on the date that the requester applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The City seeks to protect **Exhibit 2** from public disclosure under section 552.103(a). The test for meeting this burden has two prongs. The City must prove that (1) litigation is either pending or is reasonably anticipated, and (2) the information requested is related to that litigation. See *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no. pet.); Tex. Att'y Gen. OR99-1840 (1999) at 1. In other words, the City must provide concrete evidence proving its claim that litigation may ensue is more than mere conjecture. See Tex. Att'y Gen. ORD-452 at 4 (1986).

The responsive materials (**Exhibit 2**) consist of documents and communications pertaining to homeless citizens in the City of Houston. **Exhibit 2** is related to a pending lawsuit styled: *Tammy Kohr and Eugenia Stroman, on behalf of themselves and all others similarly situated, and Robert Colton, v. City of Houston*, Case No. 4:17-cv-01473. The complaint was filed on May 12, 2017, in the United States District Court, Southern District of Texas, Houston Division and subsequently an amended complaint was filed July 14, 2017, where it is currently pending. See **Exhibits 3 and 3-A**, which are not a part of the responsive information. The first of the two prongs is fulfilled, as there is pending litigation in this instance.

Additionally, the responsive information (**Exhibit 2**) fulfills the second prong of section 552.103 because it directly relates to the subject matter of the pending lawsuit. See **Exhibits 3 and 3-A**, which are not a part of the responsive information. The information contained in **Exhibit 2** could be used in litigation by the opposing party. As such, release of the responsive information would hurt the City's ability to protect its position in the pending litigation. Because litigation was pending against the City at the time the request was received and the responsive information directly pertains to that litigation, the City asserts that it may withhold **Exhibit 2** from public disclosure pursuant to section 552.103 of the Government Code.

Section 552.107 of the Government Code

The City believes the responsive information contained in **Exhibit 2** are excepted from public disclosure pursuant to section 552.107 of the Government Code, which protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. Tex. R. Evid. 503(b)(1). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. Tex. R. Evid. 503(b)(1). A representative of a lawyer can include "one employed by the lawyer to assist the lawyer in the rendition of professional legal services." ORD 676 at 9. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." Tex. R. Evid. 503(a)(5).

The communications in **Exhibit 2** consist of correspondence sent to, from, and among City attorneys and attorney representatives and City employees in their capacity as clients. See **Exhibit 2A**, which is not responsive, for the list of personnel and their respective titles and departments. The communications at issue were made in furtherance of the rendition of professional legal services to the City. These communications in **Exhibit 2** were not intended for third parties, and the confidentiality of these

Attorney General Ken Paxton

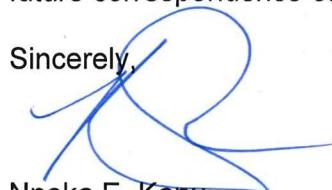
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communications has been maintained. The City notes that the communications contain attachments which the City also asserts are attorney-client privileged. Furthermore, the City has not waived its attorney-client privilege in this instance. For these reasons, the City contends that these communications in **Exhibit 2** may be withheld from public disclosure under section 552.107 of the Government Code.

The City respectfully requests a ruling on this matter. Please do not hesitate to contact the undersigned at (832) 393-6491, should you require additional information. Please reference **GC No. 26088** in any future correspondence concerning this request.

Sincerely,



Nneka E. Kanu
Assistant City Attorney

NEK/jmb

Enclosure(s)

cc: **Sent via electronic mail to:**

Chris Adkins

78824-30628253@requests.muckruck.com

(w/o Exhibits)

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